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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,738	02/04/2004	Kevin Tucek	206-032	5639
33354	7590	03/29/2006	EXAMINER	
ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008			JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER

3739

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/772,738	Applicant(s) TUCEK ET AL.	
	Examiner Henry M. Johnson, III	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 18 is/are allowed.
- 6) ☒ Claim(s) 2-5 and 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Dunne et al. discloses a laser with a gimbaled mirror for scanning.

The term "comprising a single optical element" in claims 2 and 17 does not clearly limit the device to only one optical element. Although art with only one optical element in a scanner is cited, the interpretation of this wording is that it does not clearly limit the device to only one element.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3, 5, 7, 8, 11 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,626,834 to Dunne et al. Dunne et al. teach a scanning device in a hand held probe (Col. 1, lines 20-24). An embodiment with a mirror and magnet on an elastomer membrane that serves as a flexural bearing instead of a gimbal mounting such as to permit at least two degrees of freedom of movement about two axes of rotation which are perpendicularly disposed one to the other (Col. 16, lines 43-57). An electromagnetic coil assembly, preferably driven by a microprocessor, provides the scanning of the mirror (Col. 11, lines 55-60). The mirror receives a beam which is preferably a superluminescent diode or other low coherence

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light source that is conducted by means of an optical fiber to the mirror (Col. 16, lines 58-63).

The device is disclosed as capable of scanning a conical scanning field, and with appropriate control, is capable of making a volumetric scan within the conical scanning field. A conical area is interpreted as a variant of a hemisphere.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,626,834 to Dunne et al. as applied to claim 2 above, and further in view of U.S. Patent 5,735,276 to Lemelson. Dunne et al. is discussed above, but does not teach a movable prism. Lemelson teaches a handheld apparatus for scanning a laser beam. The laser may include a mirror M (see FIG. 1a), prism or lens which is controllably deflected or pivoted about a pivot to cause beam to scan a select path such as a line, raster, spiral or other path across a surface. Mirror (or a prism or lens--not shown) may also be synchronously pivoted in mutually

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perpendicular directions about mutually perpendicular or otherwise extending axes (Col. 5, line 60 to Col. 6, line 12). It would have been obvious to one skilled in the art to use a prism for the scanning optical element as taught by Lemelson in the invention of Dunne et al. as it is well known to use prisms, mirrors and lenses in the deflection of beams. Further, one skilled in the art would look to related art such as lasers or optics, for teachings of deflecting means.

Claims 9, 10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,626,834 to Dunne et al. as applied to claims 2 and 8 above, and further in view of U.S. Patent 5,879,376 to Miller. Dunne et al. is discussed above. Miller teaches a surgical laser system for tissue treatment with a handpiece. A commercial scanner may replace the standard handpiece and serve to contiguously place treatment spots on the skin. This would allow for the rapid uniform coverage of large treatment areas with any particular spot size (Col. 9, lines 48-55). The laser may be provided by a semiconductor diode (Col. 5, line 10). Two lasers may be provided, a treatment beam and a red, visible, aiming beam (Col. 9, Lines 30-42). Laser control is implicit in that pulse repetition rates of from 1-20 Hz are disclosed, thus altering the energy distribution. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the pulse rate control and red and visible beams as taught by Miller in the invention of Dunne et al. as control of beam parameters is not only known but required to achieve specific treatments and the concept of an aiming beam used with a treatment beam is pervasive in the art.

Allowable Subject Matter

Claims 6 and 18 are allowed.

Conclusion

During a telephone discussion, the examiner and Sandra Etherton were not able to reach agreement on several items. Agreement was not reached on the interpretation of comprising a single optical element. The examiner indicating the term allows additional optical elements as it is not specifically limited to only one. The directing of a beam to any location within a hemisphere was also discussed, the examiner's position being a hemisphere could be located anywhere and be of any size forward of the wand, thus smaller angles of deflection would be capable of irradiating such a hemisphere. Ms. Etherton indicated that such narrow angles should be interpreted as a narrowing of allowed claim 18. The unique structure of the scanning elements (spindle, cam, etc) is the reason for the allowability of claim 18. No beam deflecting angles or limits are cited.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

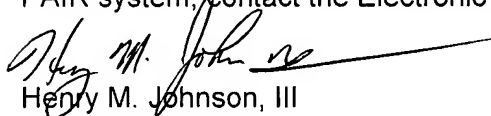
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Primary Examiner
Art Unit 3739